

City Council Work Session

Tuesday, February 28, 2012

6:00 p.m.

City Council Chambers – Rouss City Hall

PRESENT: President Jeff Buettner; Councilor Evan Clark, John Tagnesi, Les Veach and Art Major; Vice-President John Willingham; Vice-Mayor Milt McInturff; Mayor Elizabeth Minor (8)
ABSENT: Councilor John Hill (1)

President Buettner called the meeting to order at 6:00 p.m.

CU-12-35: Conditional Use Permit – Request of Israel Brooks for a conditional use permit for a youth activity center at 720 South Braddock Street (*Map Number 212-01-F-5*) zoned Central Business (B-1) District.

Zoning Administrator Vince Diem said the first item that he has is a request for a conditional use permit for a youth activity center at 720 South Braddock Street zoned Central Business District. He said it is outside of Historic Winchester District. The applicant is attempting to establish the use of a Game Time Center that much closely resembles the activity center by definition of the ordinance which requires a conditional use permit. Within their letter of intent, which has been revised since their initial application, they would like to focus on providing programs for middle to high school aged children and to some degree there will be opportunities for preschool children to be there. Looking at the initial letter of intent, which was not completely in detail, three major concerns need our attention. With the first one being off street parking, the second concern being adult supervision and the third being there is a broad age group. The applicant is aware of the imposed conditions that will not adversely affect the health, safety or welfare of persons residing or working in the neighborhood, nor be detrimental to public welfare or injurious to property or improvements in the neighborhood. The applicant has been very responsive to the staff and commission's concerns and appears to address all the concerns, so we have no objections or concerns.

Councilor John Tagnesi made a motion to forward CU-12-35 to Council. *The motion was seconded by Councilor Les Veach then unanimously approved 8/0.*

DISCUSSION: A Public Hearing to revoke CU-11-62 to operate a nightclub establishment at TC Tooties Historic Sports Pub, located at 2235 Valor Drive, Pursuant to Section 18-2-3.9 of the Winchester Zoning Ordinance

Zoning Administrator Vince Diem said he is here to talk about a previously issued conditional use permit for nightclub use at the establishment TC Tooties Historic Sports Pub. We are requesting that City Council schedule a public hearing to consider the revocation of the previous permit for nightclub. On June 14, 2011 City Council approved the nightclub conditional use permit for TC Tooties located at 2235 Valor Drive and

there was an initial hesitancy on the part of City Council to approve the conditional use permit. Vince Diem went over some incidents that have occurred and the pending charges. Vince Diem said their staff delivered the notice to the establishment in person. Based on the issues identified we immediately resented the certificate of occupancy which is in accordance with section 18-1-4 of the Winchester Zoning Ordinance and the business responded by visiting City Hall and submitting a request for a certificate of occupancy.

Vince Diem said at this point because of the timing sequence we are looking at an April public hearing for the Board of Zoning Appeals and the April public hearing is a day after City Council's regular meeting. So if City Council were to wait to schedule this for a public hearing, the earliest this could occur would be the second Tuesday in May.

There was a discussion about the ABC violations.

Councilor Veach asked about if Council could revoke the CUP, what were the conditions and could they just violate any of these that were set out. Vince Diem said correct, under section 18-2-3.9 of the ordinance it says that "If the applicant or successor fails to comply with any conditions imposed by City Council per section 18-2-1.1, City Council may, in accordance with 15.2-2286, Code of Virginia, et seq., either amend or revoke the Conditional Use Permit upon notification from the Administrator of such failure to comply. No such amendment or revocation shall be considered by City Council until a public hearing has been held per Section 23-7-1 of this Ordinance." Vince Diem said because of the types of incidents that have occurred, although their average of criminal offense incidents for 2011 was 3.34, it is of particular concern that the types of incidents are very threatening to public health safety and welfare, especially when there are shots fired or an incident occurring in the parking lot outside the establishment. That, along with the technicalities and circumstances including the excise taxes, ABC violations, and the types of calls for service that were noted by the police department.

Vice-Mayor McInturff asked if Council can temporarily suspend their CUP until the public hearing. Vince Diem he may have to refer to the City Attorney for that one, because it simply says that City Council may revoke the conditional use permit until the public hearing has been held. City Attorney Anthony Williams said "until the hearing has been held" it can be revoked.

Councilor Clark asked about if we were just talking about the CUP for their nightclub. Vince Diem said they can still operate as a restaurant and a bar.

The earliest this would be allowed to schedule a hearing was brought up. City Attorney Anthony Williams said the issue is that they currently have appealed the determination to the BZA, so the BZA could very well overturn Vince Diem's determination, so until that happens, his recommendation is that Council take no action until the BZA has fully vindicated Vince Diem's letter.

Vince Diem said this will be scheduled for the April meeting for the BZA. Interim City Manager Craig Gerhart said that the public hearing is a day after the City Council meeting in March. Councilor Clark asked if there was a way we could be in compliance

with notification procedures and make an announcement at this point to speed this process up for the BZA so they can hurry up and have this hearing. Vince Diem said he thinks we are outside the 2 week window for a March public hearing, we are required to publicize that hearing for 2 successful weeks

Councilor John Tagnesi made a motion to forward this to the May meeting, pending the outcome of the BZA meeting. *The motion was seconded by Councilor Les Veach then unanimously approved 8/0.*

O-2012-06: Ordinance to adopt changes to Article IX of Winchester City Code

Chief Kevin Sanzenbacher said is he here before Council tonight to ask to change the current city ordinance Article IX of assemblies, demonstrations and parades, which requires anyone wishing to hold an event involving more than 10 people on public space or property to file an application with the City requesting a permit to gather. The existing application can be up to 14 pages long, is often confusing and involves a coordination of various city and state agencies. The proposed form can now be downloaded via the internet and once adopted can be completed and submitted in person or by email, it will be reduced from 14 pages to 5 pages with the frequently asked questions self-evident in the form. In order to accommodate all the types of requests received, there has been designated a time frame of 5 days for applicants of public assemblies and a 90 day timeframe for parade and special events. This action requires no additional funds, the saving of time and manpower may occur as the process becomes more efficient.

Councilor Clark thanked Chief Kevin Sanzenbacher for stream lining the process. Councilor Clark said the only question he has is for City Attorney Anthony Williams, he asked about the 5 day waiting period that allows staff time to be prepared and make sure there is no conflict from different sites and if the City is at risk of running a foul of right to assembly laws in that case. City Attorney Anthony Williams said “No, in fact I believe the ordinance says it existed before the Chief’s proposed amendment was 5 days, he simply created a longer period for much larger events and I think it’s reasonable for him to do that in the interest of public safety.”

Councilor Veach asked Chief Kevin Sanzenbacher if it would make sense to add the Old Town Development Board since they are not listed and since there were so many parties listed to review the applicants. Chief Kevin Sanzenbacher said they are already listed.

Vice-President Willingham said he has a concern with going from 5 to 90 days. He asked Chief Kevin Sanzenbacher to explain how the 90 days came about. Chief Kevin Sanzenbacher said the 90 days is because of all the agencies they have to coordinate with and is a comfortable time frame, but he said that 60 days is reasonable. Chief Kevin Sanzenbacher said he does not remember ever turning down someone because of the time frame. City Attorney Anthony Williams indicated that while there is a 90 day window of advanced application they only have 30 day window to turn it around. The extra time is for things like Apple Blossom where we would have to coordinate with other agencies such as the National Guard to help them with traffic and things like that.

Mayor Elizabeth Minor made a motion to forward O-2012-06 to Council. *The motion was seconded by Vice-Mayor Milt McInturff then approved by a 7/1 voice vote with Vice President Willingham voting in the negative.*

O-2012-07: Approval of Right of Way Easement Agreement with Rappahannock Electric Cooperative for Landfill Property in Clarke County

Public Services Director Perry Eisenach said the Regional Landfill owns a farm in Clarke County and the purpose of buying that farm is to get the clay, shale and topsoil to use in the Regional Landfill. In order to do the operation correctly and comply with their sanitation control they need to build a big berm, but there is an electric line in the way of where this berm needs to be built. So Rappahannock Electric needs to move the electric line but since the City is involved in the Regional Landfill there needs to be an easement granted to Rappahannock Electric.

Councilor Evan Clark made a motion to forward O-2012-07 to Council. *The motion was seconded by Councilor John Willingham then unanimously approved 8/o.*

R-2012-10: Personal Property Tax Relief Rate for Tax Year 2012

Commissioner of Revenue Ann Burkholder said this is a complicated subject since there is no personal property tax relief, but there is good news. She said a brief summary of this is that 2 years ago the city had 9,000 to 10,000 vehicles which was on the City tax roll and then the city had 9,000 to 10,000 vehicles which were not on the City tax roll and should not have been. They are making it a priority to work on making better use of technology, staff time and are now downloading from the DMV weekly. This has helped and they have more accurate files. Ann Burkholder said over the past 2 years the tax relief rate has gone up, which is good news for the citizens because when the tax relief rate goes up, tax bills go down. The average assessment of the vehicles has gone down because of the recession and people not buying as many new vehicles. She feels very confident of keeping that number at 72% for the tax year for 2012.

Councilor John Willingham made a motion to forward R-2012-10 to Council. *The motion was approved by Councilor Art Major then unanimously approved 8/o.*

R-2012-11: Resolution to approve a request to apply for the FEMA “SAFER” grant

Director of Finance Mary Blowe said the City was presented with an opportunity to apply for a “SAFER” grant from FEMA. This is for staffing for adequate fire and emergency response, which essentially pays for the first year of a required two year tour for firefighters. Based on our staffing plan, we would like to apply for 12 firefighters which would equal approximately \$600,000 plus equipment costs about \$102,000 if we were to hire all 12 of them. The first year would be paid for and the second year that’s when these costs would kick into the City. The City’s chance of receiving this grant is a little less than normal because we are all evaluated separately and we are considered a third tier recipient meaning that we are applying for new hires. Chief Scott Cullers said if we were accepted we would come back to council to accept the grant and there is a 30 day window and if this is not approved or whatever reason the grant can be denied.

Chief Scott Cullers said they also projected planning and they said by the year 2017 they predict to have 8 retirements. Chief Scott Cullers said it is a long shot we will get this grant, but get a grant for fully what we requested, so we gave you the cost of the second year salaries for 4, 8 as well as 12 firefighters.

There was a discussion about the budget, salaries and whether or not asking for a grant for 12 firefighter's salaries would be too much considering the City has to pay the salaries after the first year.

Councilor Art Major made a motion to ask for 4 firefighter's salaries instead of 12 when applying for the grant. *The motion was seconded by Vice-President Willingham then unanimously approved 8/o.*

Mayor Elizabeth Minor made a motion to forward R-2012-11 to Council. *The motion was seconded by Vice-President John Willingham then unanimously approved 8/o.*

FY13 Budget Discussion

Director of Finance Mary Blowe said the revenue is still following in line and it's up a little bit at \$70,900,000. She said what they do is look at the FY12 budgets to see if we are continuing those programs or we are fulfilling the second part of those plans that we discussed when we created this. Mary Blowe said under expenditures they were able to weave in those VRS increases at 4.12%. Mary presented the priority funding items based on the different real estate tax increases.

Director of Finance Mary Blowe went over the five-year capital improvement plan. Mary went over agency requests for funding summary page and said the paper she passed out showing your tax dollars at work will be on the back of the tax bills. Mark Garber said these are on the tax bills now. Celeste Broadstreet went over the department reclassification requests. Vice-Mayor McInturff asked Joel Davis to give a background on why we are going by the numbers Commonwealth Attorney Alex Iden gave us. The Human Resources Director Joel Davis said to keep it simple and brief there are two criteria they used, the measure of the degree of difficulty and complexity of the job is determined by the job content and the statistical measure of average rate of pay. Mr. Davis said we take the job description to him and he looks and evaluates each particular criteria of the job based on complexity and in comparison with other jurisdictions who have similar positions.

Vice-Mayor McInturff asked Mr. Davis which counties were used for the comparison. Mr. Davis said they did not look at Fairfax and Loudoun County because we just cannot compete with that. He said they looked at Warren, Clarke, Harrisonburg, Staunton, and Frederick County. There was a discussion about the counties that were used for the comparison and being on a level playing field for everyone.

Vice-President Willingham asked after looking at the increase in expenditures if this was the rate VRS stated. Celeste Broadstreet said these are the rates VRS certified, it still has to be passed by the state. Interim City Manager Craig Gerhart said there is still a betty of bills that are still floating around that deal with VRS, he said none of them to the best of

his knowledge change that rate calculation, but in terms of calculation VRS is still a little bit of a wildcard and we are going to have to look at this as a whole pot, but the rate seems to still be good.

There was a discussion about focusing on Downtown with branding and marketing and finding a way to be a champion to have some money to do things with and VRS and the tax increases.

Motion to Approve: FY 2013 CDBG funds and to authorize advertisement of proposed use of CDBG funds for Program Year 2012 for purposes of receiving public comment

Interim City Manager Craig Gerhart said this is another instance where we are operating under some advertising requirements and deadlines. The CDC took a look at coming up with recommendations for how to allocate the CDBG money that we would anticipate for the next fiscal year. Option one will have the bulk of our CDBG money going to the loan and repayment with a little bit off the top for planning and administration. Should that not occur the CDC wanted to give Council another option. Under option two there is a little bit more money available for planning and administration, with 15% for Public Services activities, 30% for Special Economic Development Activities and 35% for Public Facilities Improvements. This is the recommendation from CDC for Council.

Councilor Evan Clark made a motion to forward the FY2013 CDBG funds and to authorize advertisement of proposed use of CDBG funds for Program Year 2012 for purposes of receiving public comment to Council. *The motion was seconded by Councilor Les Veach then approved by a 7/0 vote. Vice-President John Willingham abstained.*

Vice-President John Willingham made a motion to forward the Appointments/Reappointments to Council. *President Jeff Buettner seconded the motion then unanimously approved 8/0.*

Motion to Appoint/Reappoint_____ to serve on The Board of Architectural Review (3)

Motion to Appoint/Reappoint_____ to serve on the Board of Zoning Appeals (1)

Motion to Appoint/Reappoint_____ to serve on the Economic Development Authority (2)

Motion to Appoint/Reappoint_____ to serve on the Parks & recreation Advisory Board (1)

Motion to Appoint/Reappoint_____ to serve on the Planning Commission (2)

EXECUTIVE SESSION

MOTION TO CONVENE IN EXECUTIVE SESSION PURSUANT TO §2.2-3711(A)(6) AND (29) OF THE CODE OF VIRGINIA FOR THE PURPOSE OF DISCUSSION AND CONSIDERATION OF THE SUBJECT OF THE INVESTMENT OF PUBLIC FUNDS WHERE BARGAINING IS INVOLVED AND THE AWARD OR AMENDMENT OF A PUBLIC CONTRACT INVOLVING THE EXPENDITURE OF PUBLIC FUNDS AND DISCUSSION OF THE TERMS OR SCOPE OF SUCH CONTRACT, WHERE DISCUSSION IN AN OPEN SESSION WOULD ADVERSELY AFFECT THE BARGAINING POSITION OR NEGOTIATING STRATEGY OF THE PUBLIC BODY, AND PURSUANT TO §2.2-3711(A) (1) OF THE CODE OF VIRGINIA FOR THE PURPOSE OF DISCUSSION AND CONSIDERATION OF INFORMATION REGARDING THE SUBJECT OF THE EMPLOYMENT, ASSIGNMENT, APPOINTMENT, AND PERFORMANCE OF SPECIFIC PUBLIC OFFICERS APPOINTEES, AND EMPLOYEES OF THE CITY OF WINCHESTER INCLUDING THE APPOINTMENT OF OR PROSPECTIVE APPOINTMENT OF MEMBERS TO CERTAIN BOARDS AND COMMISSIONS, AND PURSUANT TO §2.2-3711(A)(3) FOR THE PURPOSE OF DISCUSSION OR CONSIDERATION OF THE SUBJECT OF THE ACQUISITION OF AN INTEREST IN REAL PROPERTY FOR A PUBLIC PURPOSE AND PURSUANT TO §2.2-3711(A)(7) OF THE CODE OF VIRGINIA FOR THE PURPOSE OF RECEIVING LEGAL ADVICE AND STATUS UPDATE FROM THE CITY ATTORNEY AND LEGAL CONSULTATION REGARDING SPECIFIC LEGAL MATTERS REQUIRING THE PROVISION OF LEGAL ADVICE BY THE CITY ATTORNEY AND MATTERS OF ACTUAL OR PROBABLE LITIGATION.

Vice-Mayor Milt McInturff moved to convene into executive session at 7:23 p.m. *The motion was seconded by Councilor Les Veach then unanimously approved 8/o.*

Vice-President John Willingham moved to reconvene into open session at 8:53 p.m. *The motion was seconded by President Buettner then unanimously approved 8/o.*

A roll call vote was taken, the ayes and nays being recorded as shown below:

<u>MEMBER</u>	<u>VOTE</u>
President Buettner	Aye
Councilor Clark	Aye
Councilor Hill	Absent
Vice-President Willingham	Aye
Vice-Mayor McInturff	Aye
Mayor Minor	Aye
Councilor Tagnesi	Aye
Councilor Veach	Aye
Councilor Major	Aye

Other News

Councilor Art Major said effective immediately he is resigning his position as City Councilor as he has completed his move to his new residence.

Adjourn

Councilor Evan Clark made a motion to adjourn the meeting at 8:54 p.m. *The motion was seconded by Councilor John Tagnesi then unanimously approved 8/0.*